

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3
4 FREDERICK GATLIN,) No. C 07-3696 CW (PR)
5 Petitioner,)
6 v.) ORDER GRANTING RESPONDENT'S
7 JAMES TILTON,) MOTION TO DISMISS
8 Respondent.) (Docket no. 6)

INTRODUCTION

Petitioner Frederick Gatlin, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent James Tilton filed a motion to dismiss for untimeliness. Petitioner filed an opposition, and Respondent subsequently filed a reply. Having considered the papers submitted, the Court GRANTS Respondent's motion to dismiss.

PROCEDURAL BACKGROUND

On November 9, 1998, Petitioner was convicted of vehicle theft under Cal. Veh. Code § 10851 and, based upon two prior robbery convictions, sentenced to twenty-five years to life pursuant to California's Three Strikes law. Petitioner appealed the judgment to the California Court of Appeal where his conviction was affirmed on August 2, 2000. He subsequently filed a petition for review in the California Supreme Court which was denied on October 18, 2000.

On September 28, 2006, after a period of over five years, Petitioner filed a petition for a writ of habeas corpus in the Santa Clara Superior Court. The petition was denied on October 30, 2006. He filed a petition for a writ of habeas corpus in the

1 California Court of Appeal on December 6, 2006, which was denied
2 on December 21, 2006. Finally, he filed a petition for a writ of
3 habeas corpus in the California Supreme Court on January 16, 2007,
4 which was denied on June 20, 2007.

5 On July 18, 2007, Petitioner filed the instant petition.¹
6 Respondent filed a motion to dismiss, claiming that Petitioner had
7 failed to file his petition within the statute of limitations. On
8 December 31, 2007, Petitioner responded by arguing that he was
9 entitled to equitable tolling based upon his mental illness, his
10 use of psychotropic medicines, and the physical ailments that he
11 suffered from 2004 until 2006. On January 10, 2008, Respondent
12 filed a reply.

13 DISCUSSION

14 The AEDPA became law on April 24, 1996 and imposed for the
15 first time a statute of limitations on petitions for a writ of
16 habeas corpus filed by state prisoners. Petitions filed by
17 prisoners challenging non-capital state convictions or sentences
18 must be filed within one year of the latest date on which: (A) the
19 judgment became final after the conclusion of direct review or the
20 time passed for seeking direct review; (B) an impediment to filing
21 an application created by unconstitutional state action was
22 removed, if such action prevented petitioner from filing; (C) the
23

24 ¹ A pro se federal habeas petition is deemed filed on the date
25 it is delivered to prison authorities for mailing. See Saffold v.
Newland, 250 F.3d 1262, 1268 (9th Cir. 2001), vacated and remanded on
other grounds, Carey v. Saffold, 536 U.S. 214 (2002) (holding that a
26 federal or state habeas petition is deemed filed on the date the
prisoner submits it to prison authorities for filing, rather than the
27 date it is received by the courts). July 18, 2007 is the date the
instant petition was signed and the earliest date that the petition
28 could have been delivered to prison authorities for mailing. The
Court assumes for the purposes of this discussion that the petition
was delivered to prison authorities on that date.

1 constitutional right asserted was recognized by the Supreme Court,
2 if the right was newly recognized by the Supreme Court and made
3 retroactive to cases on collateral review; or (D) the factual
4 predicate of the claim could have been discovered through the
5 exercise of due diligence. 28 U.S.C. § 2244(d)(1)(A)-(D). Also,
6 "[t]he time during which a properly filed application for state
7 post-conviction or other collateral review with respect to the
8 pertinent judgment or claim is pending shall not be counted toward
9 any period of limitation." Id. § 2244(d)(2).

10 A state prisoner with a conviction finalized after April 24,
11 1996, such as Petitioner, ordinarily must file his federal habeas
12 petition within one year of the date his process of direct review
13 came to an end. See Calderon v. United States District Court
14 (Beeler), 128 F.3d 1283, 1286 (9th Cir. 1997), overruled in part
15 on other grounds by Calderon v. United States District Court
16 (Kelly), 163 F.3d 530 (9th Cir. 1998) (en banc).

17 The one-year period generally will run from "the date on
18 which the judgment became final by conclusion of direct review or
19 the expiration of the time for seeking such review."
20 28 U.S.C. § 2244(d)(1)(A). "Direct review" includes the ninety-
21 day period during which a criminal appellant can file a petition
22 for a writ of certiorari from the United States Supreme Court,
23 whether he actually files such a petition or not. Bowen v. Roe,
24 188 F.3d 1157, 1159 (9th Cir. 1999). In the present case, the
25 judgment became final for purposes of the statute of limitations
26 on January 19, 2001 because Petitioner did not file a petition for
27 a writ of certiorari in the United States Supreme Court within
28 ninety days. Bowen, 188 F.3d at 1159.

1 Accordingly, Petitioner was required to file a federal habeas
2 corpus petition no later than January 18, 2002. Because he did
3 not file the present petition until July 18, 2007 -- more than
4 five years after the limitations period had expired -- the
5 petition is untimely unless he can show that he is entitled to
6 statutory or equitable tolling.

7 I. STATUTORY TOLLING

8 The petition may nonetheless be timely if the limitations
9 period was tolled under 28 U.S.C. § 2244(d)(2) for a substantial
10 period of time. As noted earlier, AEDPA's one-year limitations
11 period is tolled under § 2244(d)(2) for "[t]he time during which a
12 properly filed application for state post-conviction or other
13 collateral review with respect to the pertinent judgment or claim
14 is pending. . . ." 28 U.S.C. § 2244(d)(2). The limitations
15 period is also tolled during the time between a lower state
16 court's decision and the filing of a notice of appeal to a higher
17 state court. Carey, 536 U.S. at 223. In California, where
18 prisoners generally use the state's original writ system, this
19 means that the limitations period remains tolled during the
20 intervals between a state court's disposition of an original state
21 habeas petition and the filing of the next original state habeas
22 petition in a higher court, provided the prisoner did not delay
23 unreasonably in seeking review in the higher court. See id. at
24 220-25.

25 Petitioner filed his state habeas petition in the Santa Clara
26 County Superior Court on September 28, 2006. However, he is not
27 entitled to tolling under Section 2244(d)(2) because the
28 limitations period had already run on January 18, 2002. A state

1 habeas petition filed after AEDPA's statute of limitations ended
2 cannot toll the limitations period. "[S]ection 2244(d) does not
3 permit the reinitiation of the limitations period that has ended
4 before the state petition was filed," even if the state petition
5 was timely filed. See Ferguson v. Palmateer, 321 F.3d 820, 823
6 (9th Cir. 2003) (holding that Oregon's two-year limitations period
7 for the filing of state habeas petitions does not alter the
8 operation of the AEDPA, even though prisoners who take full
9 advantage of the two-year period will forfeit their right to
10 federal habeas review). Section 2244(d)(2) cannot revive the
11 limitations period once it has run. It cannot restart the clock
12 to zero; it can only serve to pause a clock that has not yet fully
13 run. Thus, in order to toll the limitations period under
14 § 2244(d)(2), Petitioner should have begun to pursue collateral
15 relief in state court before AEDPA's one-year limitations period
16 had expired. See Ferguson, 321 F.3d at 823; see also Rashid v.
17 Kuhlmann, 991 F. Supp. 254, 259 (S.D.N.Y. 1998) ("Once the
18 limitations period is expired, collateral petitions can no longer
19 serve to avoid a statute of limitations").

20 Accordingly, the state petition filed on September 28, 2006
21 does not revive the limitations period because it had already
22 expired. Therefore, without more, Petitioner is not entitled to
23 statutory tolling of the statute of limitations.

24 II. EQUITABLE TOLLING

25 The one-year limitations period can be equitably tolled
26 because § 2244(d) is a statute of limitations and not a
27 jurisdictional bar. See Beeler, 128 F.3d at 1288. "When external
28 forces, rather than a petitioner's lack of diligence, account for

1 the failure to file a timely claim, equitable tolling of the
2 statute of limitations may be appropriate." Miles v. Prunty, 187
3 F.3d 1104, 1107 (9th Cir. 1999). Equitable tolling will not be
4 available in most cases because extensions of time should be
5 granted only if "'extraordinary circumstances' beyond [a]
6 prisoner's control make it impossible to file a petition on time."
7 Beeler, 128 F.3d at 1288 (citation and internal quotation marks
8 omitted). The prisoner must show that "the 'extraordinary
9 circumstances' were the cause of his untimeliness." Spitsyn v.
10 Moore, 345 F.3d 796, 799 (9th Cir. 2003) (citations omitted). The
11 Ninth Circuit has said that the petitioner "bears the burden of
12 showing that this extraordinary exclusion should apply to him."
13 Miranda v. Castro, 292 F.3d 1063, 1065 (9th Cir. 2002). "'[T]he
14 threshold necessary to trigger equitable tolling [under the AEDPA]
15 is very high, lest the exceptions swallow the rule.'" Id. at 1066
16 (quoting United States v. Marcelllo, 212 F.3d 1005, 1010 (7th
17 Cir.), cert. denied, 531 U.S. 878 (2000)). The grounds for
18 granting equitable tolling are "highly fact dependant." Lott v.
19 Mueller, 304 F.3d 918, 923 (9th Cir. 2002). Where a prisoner
20 fails to show "any causal connection" between the grounds upon
21 which he asserts a right to equitable tolling and his inability to
22 file a federal habeas application timely, the equitable tolling
23 claim will be denied. Gaston v. Palmer, 417 F.3d 1030, 1034-35
24 (9th Cir. 2005), amended, 447 F.3d 1165 (9th Cir. 2006).

25 However, "[r]ather than let procedural uncertainties
26 unreasonably snuff out a constitutional claim, the issue of when
27 grave difficulty merges literally into 'impossibility' should be
28 resolved in [a petitioner's] favor." Lott, 304 F.3d at 920. When

1 a prisoner is proceeding pro se, his allegations regarding
2 diligence in filing a federal petition on time must be construed
3 liberally. Roy v. Lampert, 465 F.3d 964, 970 (9th Cir. 2006).

4 The Court must also take care not to deny a motion for
5 equitable tolling before a sufficient record can be developed. In
6 Laws v. Lamarque, the Ninth Circuit reversed the district court's
7 order granting a motion to dismiss because it failed to develop
8 the record in response to Laws's claim of mental incompetency.
9 351 F.3d 919, 924 (9th Cir. 2003). At the time the district court
10 dismissed the petition, the record showed that a divided panel of
11 psychiatric experts had concluded that Laws was competent at the
12 time of his trial. However, the record did not contain any
13 medical records from the period for which equitable tolling was
14 requested. Id. at 923. Further, the respondent had not provided
15 any evidence to rebut Laws's assertion that he was "deprived of
16 any kind of cons[ci]ousness." Id. at 924. The Ninth Circuit
17 determined that a district court should not require the petitioner
18 to "carry a burden of persuasion" at the time he asserts equitable
19 tolling to merit further investigation into the merits of his
20 arguments for tolling. Id. Instead, Ninth Circuit cases require
21 only that there be "circumstances consistent with [the]
22 petitioner's petition . . . under which he would be entitled
23 to . . . equitable tolling" to trigger further factual development
24 of the record. Id. (citing Whalem/Hunt v. Early, 233 F.3d 1146,
25 1148 (9th Cir. 2000) (en banc) (remanding case to district court
26 for development of facts concerning whether AEDPA materials were
27 unavailable in the prison law library and the legal significance
28 of such a finding)). The Ninth Circuit found that the district

1 court erred in granting judgment against Laws because, in light of
2 the inadequate record and unrebutted assertions before it, "[i]t
3 [was] enough that Laws 'alleged mental competency' in a verified
4 pleading." Laws, 351 F.3d at 924 (citations omitted). The court
5 was careful to point out, however, that "a petitioner's statement,
6 even if sworn, need not convince a court that equitable tolling is
7 justified should countervailing evidence be introduced." Id.
8 Therefore, the Ninth Circuit held that Laws was entitled to
9 further factual development or an evidentiary hearing on the issue
10 of whether he was precluded from filing his petition by reason of
11 mental impairment. Id. Thus, under Laws, a district court may
12 not grant a motion to dismiss merely because a petitioner fails to
13 provide evidence beyond conclusory statements to support his claim
14 for equitable tolling. Rather, the court may only dismiss a claim
15 in the presence of a sufficiently developed record containing
16 "countervailing evidence" that rebuts a petitioner's claim. Id.

17 The facts contained in the discussion below are based upon
18 the allegations in Petitioner's opposition to the motion to
19 dismiss and Respondent's reply, as well as Petitioner's prison
20 medical file submitted as Exhibits A, B and C.

21 Petitioner's first argument for equitable tolling is based on
22 his mental illness. He contends that, after he was sentenced and
23 incarcerated, his psychological condition became much worse than
24 it had been and prevented him from filing a habeas corpus
25 petition.

26 He also claims that "from 2001 until 2004, he was under
27 numerous psychotropic medications . . . due to his suffering from
28

1 hallucinations and delusions that affected his ability to sleep,
2 eat and/or rational thought patterns." (Id., Ex. C at 6.) He
3 suggests that these "numerous psychotropic medications" also
4 contributed to his inability to file his petition. (Id. at 6.)

5 In 2004, Petitioner's psychotropic medication was
6 discontinued for eight weeks so that he could be treated for
7 Hepatitis C. (Id.) He argues that the residual effects of his
8 psychological medication, coupled with the new hepatitis
9 medication, "could have" resulted in the onset of "serious medical
10 problems which effectively hindered and/or prohibited his
11 ability [to] acknowledge and understand his legal obligations
12 pursuant to the AEDPA" from 2004 through 2006. (Id.)

13 In sum, Petitioner claims he is entitled to equitable tolling
14 because he suffered from mental illnesses, medication-related
15 impairments, and physical ailments during the time period in which
16 he should have filed his state and then federal habeas petitions
17 from January 19, 2001 to September 28, 2006. (Pet'r Opp'n at 5-
18 8.) None of these claims is sufficient to establish a basis for
19 equitable tolling.

20 It is undisputed that Petitioner suffers from some degree of
21 mental illness. Severe mental illness is an extraordinary
22 circumstance beyond a prisoner's control which justifies equitable
23 tolling. However, a showing of mental illness alone will not
24 necessarily toll the limitation period because most mental
25 illnesses are treatable, and with proper treatment many sufferers
26 are capable of managing their own affairs. See Miller v. Runyon,
27 77 F.3d 189, 192 (7th Cir.), cert. denied, 519 U.S. 937 (1996).
28

1 Petitioner was twice evaluated by Dr. J. Kline prior to the
2 conclusion of his trial. The first evaluation determined that he
3 was competent to stand trial, and the second determined that he
4 did in fact suffer mental disorders. (Pet'r Opp'n, Ex. A at 8.)
5 The second evaluation stated in pertinent part:

6 Mr. Gatlin has been diagnosed in the past with
7 major depression (1993) with at least three
8 suicide attempts, schizoaffective disorder
9 versus paranoid schizophrenia versus bipolar
disorder (1993, 1994), anxiety reaction
(1994), dysthymic disorder (1994), and bipolar
disorder in the hypomanic phase (1997).

10 (Id. at 5.) Dr. Kline ultimately concluded that Petitioner "has a
11 relatively sustained psychotic thought process, but it does not
12 manifest itself in florid and sustained auditory hallucinations or
13 delusions."² (Id. at 8.)

14 Petitioner claims that his "condition worsened" in the period
15 following his sentencing and persisted until he filed his first
16 state habeas petition in 2006. (Id. at 5.) He was placed into
17 the Enhanced Outpatient Program (EOP) and "on occasion was placed
18 in single cell status until he was psychiatrically stabilized."
19 (Id. at 4.) In his February 26, 2002 psychological evaluation,
20 the doctor's assessment of Petitioner stated that he was
21 "psychotic" and ordered both an increase in his medication and
22 placement into a single cell. (Id., Ex. B.) A subsequent report
23 in June, 2002 stated that Petitioner was having "not much problem
24 psychiatrically." (Id.) Nevertheless, he was again placed in a
25 single-cell in October, 2002. (Id.) Petitioner's Case Management
26 Progress Note for January, 2003 stated that his condition
27

28 ² The record does not disclose whether Petitioner was on any
medication at the time of this evaluation.

1 "remained the same," but that he was "not med compliant" and that
2 he possessed "no acute symptoms at this time." (Id.) In March,
3 2003, his condition seems to have improved markedly. According to
4 the progress note, Petitioner was allowed to have a cell mate
5 again, his "level of [mental health] program participation" had
6 been recently reduced, he sounded "rational and coherent," and he
7 denied experiencing "any issues." (Id.) The final report in the
8 record (November, 2004) states that Petitioner's condition had
9 improved, but he was refusing to take his medication.

10 Petitioner's argument concerning his deteriorating mental
11 state does not qualify him for equitable tolling. The evidence in
12 the record is insufficient to support Petitioner's claim that his
13 condition worsened significantly. The record does not show any
14 decline in Petitioner's condition despite the fact that he refused
15 to take his medication at various times. In fact, Dr. Kline's
16 1998 report, the June, 2002 progress report, the January, 2003
17 Case Management Progress note, and the March, 2003 report state
18 that Petitioner's condition was improving. Therefore, the
19 evidence weighs heavily against his assertion that he was
20 incapable of filing his petition.

21 Petitioner also argues that his psychotropic medication,
22 which he allegedly took except for an eight-month period in 2004,
23 prevented him from exercising his rights under AEDPA. This
24 argument is not persuasive. Certainly, his medical records
25 indicate that he was depressed, paranoid, and experienced
26 hallucinations, but it is counter-intuitive to suggest that his
27 medication, which was prescribed to help him cope with his
28

1 problems on a daily basis, was also the cause of his inability to
2 exercise his legal rights. It is even more illogical to do so
3 based upon Petitioner's speculative claim that his deficiency
4 "could have resulted" from use of the medicine. Petitioner has
5 not described the effects of his medication. Furthermore,
6 numerous progress notes in his file indicate "NO evidence of any
7 side effects" from his medication. (Pet'r Opp'n, Ex. B.) The
8 record also indicates that Petitioner was "not med compliant,"
9 refusing to take his medication at various times. (Id.)

10 Even if Petitioner had periodic psychological problems, he
11 would have to show that he was unable at any time during that
12 five-year period to file his federal habeas petition. This he has
13 not done. Petitioner has also failed to provide any evidence
14 detailing how or at what point his condition improved. While the
15 records leading up to 2004 demonstrate that Petitioner's
16 psychiatric condition was improving, there are no psychological
17 evaluations after 2004 in the record. Having now submitted his
18 state and federal habeas petitions, he is apparently capable of
19 understanding his AEDPA rights and obligations. For these
20 reasons, Petitioner's arguments for equitable tolling based upon
21 his mental illness and the effects of his psychotropic medication
22 are without merit.

23 Finally, Petitioner argues that his "hepatitis medication
24 coupled with the previously taken psychotropic medication" (which
25 had been suspended temporarily in 2004) caused him severe physical
26 illnesses such as "chest pains, painful, swelling and shaking
27 hands, vomiting and coughing-up blood, blood in stool, [and]

1 fatigue, which hindered his ability to understand his legal
2 obligations from 2004 through 2006. (Id. at 6.) According to the
3 petition, the hepatitis treatment was terminated after eight
4 weeks, but his physical ailments persisted.

5 An examination of his medical records from 2004 through 2006
6 indicates that Petitioner did experience chest pain, swelling in
7 his hands and fingers, and that he was referred to cardiology for
8 potential heart problems. (Id., Ex. D.) He also complained of
9 blood in his stool and coughing up blood. (Id.) Later reports
10 indicate that he was "very weak . . . possibly anemic and
11 dehydrated" and had chronic liver disease. Several doctors also
12 indicated that Petitioner was obese and that his problems could be
13 a result of his weight and diet. (Id.) While Petitioner has
14 provided evidence that he was suffering from a number of physical
15 ailments, he provides no evidence or explanation as to how those
16 ailments prevented him from filing a habeas corpus petition.
17 Therefore, Petitioner's argument for equitable tolling based upon
18 his physical ailments is without merit.

20 Petitioner requests an evidentiary hearing on the issue of
21 whether he was precluded from filing his petition by reason of
22 mental or physical impairment.

23 In Laws, the record contained no medical reports from the
24 period during which the petitioner claimed to be incompetent.
25 Laws, 351 F.3d at 923. Furthermore, the "state [had] offered no
26 evidence at all that he was [competent] in the years when his
27 petitions should have been filed." Id. The present case differs
28 significantly in that the record contains periodic psychological

1 reports from April 17, 2001 until November 30, 2004, and other
2 records relating to Petitioner's physical ailments from 2005 and
3 2006. (Pet'r Opp'n, Exs. B-D.) Therefore, the record is
4 sufficiently developed for consideration, and an evidentiary
5 hearing is unnecessary. After a careful review of the record, the
6 Court is satisfied that Petitioner is not entitled to equitable
7 tolling. Contrary to Petitioner's suggestion, the Court's
8 determination is not based on resolving significant conflicts in
9 the evidence on material issues. Cf. Roy, 455 F.3d at 955-56
10 (when there are only conflicting affidavits regarding the
11 underlying facts, court must hold evidentiary hearing). The ample
12 and largely uncontested facts in the record make clear that
13 Petitioner is not entitled to the relief he seeks.
14

15 Even if it were true that Petitioner was unable to complete
16 his petition because of his psychiatric and/or physical symptoms,
17 it does not follow that he was also unable to enlist the help of
18 fellow inmates in writing or filing his petition. Petitioner
19 states that he has "always relied upon the assistance of other
20 inmates when such assistance was available, to pursue legal
21 endeavors." (Id. at 7.) Petitioner admits that "these legal
22 assistants . . . made him realize and understand his legal
23 obligations in the instant matter." (Id.) This appears to be an
24 admission that Petitioner, rather than being mentally or
25 physically incapacitated, was simply unaware of his legal rights
26 and obligations between 2001 and 2006. Petitioner's alleged
27 ignorance of the law and layman status do not amount to
28 extraordinary circumstances. A pro se petitioner's lack of legal

1 sophistication is not, by itself, an extraordinary circumstance
2 warranting equitable tolling. See Rasberry v. Garcia, 448 F.3d
3 1150, 1154 (9th Cir. 2006); cf. Hughes v. Idaho State Bd. of
4 Corrections, 800 F.2d 905, 909 (9th Cir. 1986) (illiteracy of pro
5 se petitioner not sufficient cause to avoid procedural bar);
6 Cantu-Tzin v. Johnson, 162 F.3d 295, 299-300 (5th Cir. 1998) (pro
7 se status during state habeas proceedings did not justify
8 equitable tolling); United States v. Flores, 981 F.2d 231, 236
9 (5th Cir. 1993) (pro se status, illiteracy, deafness and lack of
10 legal training not external factors excusing abuse of the writ).
11 Therefore, Petitioner is not entitled to tolling based on his
12 ignorance of the law.

13 Petitioner does not show an "extraordinary circumstance"
14 meriting equitable tolling. See Beeler, 128 F.3d at 1289.
15 Accordingly, the limitations period will not be equitably tolled.

16 CONCLUSION

17 The instant petition for habeas corpus was filed nearly five
18 years after the statute of limitations expired. Because
19 Petitioner is not entitled to statutory or equitable tolling, the
20 statute of limitations expired on January 18, 2002. Therefore,
21 Respondent's motion to dismiss (docket no. 6) is hereby GRANTED.
22 The Clerk of the Court shall terminate all remaining motions,
23 enter judgment and close the file.

24
25 This Order terminates Docket no. 6.

26 IT IS SO ORDERED.

27 DATED: 7/16/08

28
CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FREDERICK GATLIN,

Plaintiff,

Case Number: CV07-03696 CW

V.

JAMES TILTON et al.

Defendant.

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on July 16, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
located in the Clerk's office.

15 Frederick Gatlin P-19908
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Dated: July 16, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk